

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

SONNY’S/STAND #32 and
LAMAR F. DONALDSON
Respondents

Case No.: I-00-70251

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, *et seq.*) and Title 23, Chapter 30 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-70251) served January 9, 2001, the Government charged Respondents Sonny’s/Stand #32 and Lamar F. Donaldson with a violation of 23 DCMR 3012.1 (failure to keep premises free from rats and vermin).¹ The Notice of Infraction alleges that Respondents violated 23 DCMR 3012.1 on December 8, 2000, at 1309 5th Street, N.E., and seeks a fine amount of \$1,000.00 for the alleged violation. *See* 16 DCMR 3216.1(i) (as added by D.C. Law 13-172, “Fiscal Year 2001 Budget Support Act of 2000,” Title IX, Sec. 910(b) (October 19, 2000)).

¹ 23 DCMR 3012.1 provides: “All persons engaged in the operation of any restaurant, delicatessen, or catering business shall be required to take all necessary precautions to keep the premises free from rats and vermin.”

On January 24, 2001, this administrative court received Respondents' timely plea of Admit with Explanation to the charge of violating 23 DCMR 3012.1.² Accompanying Respondents' plea was a letter dated January 23, 2001 in which Respondents asserted: (1) the site of the infraction was a "common building;" (2) the building's exterminator at the time of the alleged infraction was "deficient in his duty;" and (3) the exterminator was replaced sometime subsequent to the issuance of the Notice of Infraction. Respondents also requested a suspension or reduction of the fine sought by the Government.

On January 31, 2001, this administrative court issued an order permitting the Government to respond to Respondents' plea and request within ten (10) calendar days from the order's service date.³ Because no response from the Government has been received within the allotted time, this matter is now ripe for adjudication.

II. Summary of Evidence

Respondents admit that on December 8, 2000, they violated 23 DCMR 3012.1 by failing to take "all necessary precautions to keep [their] premises free from rats and vermin." Respondents assert that their stand is located in a common building, and that the exterminator for that building was replaced by another company sometime following the issuance of the Notice of Infraction. As stated above, the Government has not challenged any of Respondents' assertions.

² This administrative court received Respondents' answer and plea by facsimile on January 24, 2001, and received a hard copy on January 25, 2001.

³ The January 31 order was duly served on February 1, 2001.

III. Findings of Fact

1. By their plea of Admit with Explanation to the Notice of Infraction (00-70251), Respondents have admitted that they violated 23 DCMR 3012.1 on December 8, 2000.
2. On December 8, 2000, Respondents failed to keep the premises free from rats and vermin.
3. Respondents have offered no evidence of their individual, as opposed to building-wide, efforts to take all necessary precautions to keep their premises free from rats and vermin as required by 23 DCMR 3012.1.
4. Respondents' stand is located in a common-use building at 1309 5th Street, N.E.
5. The exterminator for the building at 1309 5th Street, N.E. was replaced by a new exterminator sometime subsequent to the issuance of the Notice of Infraction (00-70251) on December 8, 2000.⁴

⁴ Contrary to Respondents' assertion, this administrative court does not find, on the basis of the record, that the former exterminator for the 1309 5th Street, N.E. infraction site was "deficient in his duty." The mere replacement of an exterminator does not necessarily establish that she or he was deficient in her or his duty. Moreover, the mere presence of rats and vermin does not necessarily establish a deficiency in the exterminator's performance, any more than it establishes a violation of 23 DCMR 3102.1 on the part of Respondents. The scope and manner of execution of the parties' efforts to keep the premises free of rats and vermin usually must be reviewed prior to concluding definitively that such efforts were either deficient or violative of 23 DCMR 3102.1. Because the record is devoid of evidence regarding the exterminator's activities, and in light of Respondents' plea, these matters need not be addressed for purposes of adjudicating this matter.

IV. Conclusions of Law

1. Respondents violated 23 DCMR 3012.1 on December 8, 2000.
2. The \$1,000.00 fine sought by the Government for Respondents' violation of 23 DCMR 3012.1 will be reduced. Respondents have acknowledged responsibility for their unlawful conduct, and there is no evidence in the record of a history of non-compliance. Accordingly, the fine of \$1,000.00 will be reduced to \$675.00. *See* D.C. Code § 6-2703(b)(3) and (b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

Therefore, upon Respondents' answer and plea, their application for reduction or suspension of the fine, and the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable for the infraction as charged in the Notice of Infraction (00-70251), shall cause to be remitted a single payment totaling **SIX HUNDRED SEVENTY FIVE DOLLARS (\$675.00)** in accordance with the attached instructions within twenty (20) calendar days from the date of the date of mailing of the Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permits pursuant to D.C. Code § 6-2713(f).

/s/ **4-18-01**

Mark D. Poindexter
Administrative Judge